

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:
Greka Oil & Gas, Inc.

6527 Dominion Road
Santa Maria, California

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

U.S. EPA Region IX
CERCLA Docket No. 9-2008-0015

**Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622**



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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Greka Oil & Gas, Inc. ("Respondent"). This Settlement Agreement provides for the performance of investigation and cleanup activities by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the response actions taken at the Bradley 3 Island Oil Production Facility, located at 3851 Telephone Road in Santa Maria, California (the "Facility").
2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). These authorities have been delegated to the EPA Region IX Branch Chiefs via Delegation 14-14-C and the Region IX Order dated September 29, 1997.
3. EPA has notified the state of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that Respondent will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.
6. Respondent is liable for carrying out all activities required by this Settlement Agreement.
7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:
- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
 - b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
 - c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
 - d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies to EPA of the United States.
 - e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
 - f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
 - g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
 - h. "Parties" shall mean EPA and Respondent.
 - i. "Site" shall mean all areas impacted by the release described in Paragraph 12, whether located within or outside the Bradley 3 Island Oil Production Facility located at 3851 Telephone Road in Santa Maria, California.
 - j. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
 - k. "RWQCB" shall mean the Regional Water Quality Control Board – Central Coast Region, and any successor departments or agencies of the RWQCB.
 - l. "Respondent" shall mean Greka Oil & Gas, Inc. and any heirs, successors and assigns of Greka Oil & Gas, Inc.
 - m. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs or has incurred in reviewing or developing plans, reports and other items related to the Site, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 34 (costs and attorneys fees and any monies paid to

- secure access, including the amount of just compensation), Paragraph 44 (emergency response) and Paragraph 69 (work takeover).
- n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
 - o. "State" shall mean the state of California.
 - p. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" or "hazardous substance" under California law.
 - q. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.
 - r. "Work Plan" shall mean the approved work plan for implementation of the investigation and cleanup required by this Settlement Agreement, as set forth in Appendix A to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

IV. FINDINGS OF FACT

- 9. The Facility is an onshore oil production facility operated by Respondent. The Facility consists of storage and separation equipment, oil pits, and water injection stations. The network of oil and gas leases that supplies the Facility includes twenty four wells situated on 1,778 surrounding acres.
- 10. Respondent acquired the oil and gas leases that supply the Facility from Vintage Petroleum in 2001. Oil from the wells is piped to the Facility for separation and dehydration. Finished oil is stored in tanks. Water separated during the process is held in tanks and re-injected to the oil-bearing zone.
- 11. The Facility is situated at the bend in an unnamed creek ("Creek") that runs beside the Facility's western and northern boundaries. The Creek runs approximately three quarters of a mile north of the Facility to a natural lake ("First Lake") and continues approximately one additional mile to the northwest until it reaches Bradley Lake ("Second Lake") (collectively the "Lakes"). The Creek and First Lake provide habitat for the federally-listed endangered California Tiger Salamander. At the time of the release described in Paragraph 12, the Creek was flowing.
- 12. During a rain event on the evening of January 26, 2008 and/or the morning of January 27, 2008, a power pole located at the Facility and owned by Respondent collapsed, damaging a second power pole and three transformers. The transformers, which each contained approximately twenty (20) gallons of transformer oil, fell to the ground and broke open, spilling their contents on the ground (the "Release").

13. Soil and equipment in the immediate area of the Release came into direct contact with transformer oil. Because the Release occurred during a rain event, transformer oil was carried downgradient by surface water runoff, towards the northwest corner of the Facility. Some of the transformer oil from the Release flowed directly into the Creek while some flowed into an impoundment area at the northwestern corner of the Facility (the "Drainage Basin").
14. Soils impacted by the Release may have been further spread at the Site by vehicles and personnel following the Release. Similarly, stormwater impacted by the Release may have been spread by Greka's stormwater management activities, including its use of vacuum trucks to pump water from the Drainage Basin into aboveground Baker tanks, into secondary containment areas, and into an onsite 5,000-barrel produced water tank in the southeast corner of the Facility.
15. In late January 2008, EPA's START contractors collected samples in and around the Site and submitted them to a laboratory for analysis. On January 27 and 28, 2008, EPA's START contractors collected samples from pooled oil and oily water in the immediate vicinity of the Release ("Release Area"). The sampling results showed polychlorinated biphenyl ("PCB") Aroclor 1260 in concentrations of 9.9 mg/kg in the oil and 3.9 ug/L in the oily water. On January 28, 2008, EPA's START contractors collected a soil sample from the Release Area that detected Aroclor 1260 at a concentration of 0.091 mg/kg. EPA's START contractor did not detect Aroclor 1016 in the samples it collected in the Release Area on January 27 and 28. On January 31, 2008, EPA's START contractors collected surface water samples in the Creek that detected two PCB Aroclors; Aroclor 1260 was detected at concentrations of 2.6 ug/l and Aroclor 1016 was detected at concentrations of 6.5 ug/l.
16. Respondent's contractor, LFR Environmental Management and Consulting Engineering ("LFR"), also collected samples for PCB analysis in areas potentially impacted by the Release on January 28, 2008. A sample of residual oil from one of the transformers detected Aroclor 1260 at a concentration of 21 mg/kg. Aroclor 1016 was not detected in the sample.
17. Action levels for PCBs are: (1) concentrations above 1 mg/kg in soils; (2) concentrations above 0.201 mg/kg in sediments; and (3) concentrations above 1 ug/L in surface water.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:
 - a. The Facility and the associated oil and gas wells are a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

- b. The PCB contamination found at the Site, as identified in the Findings of Fact above, is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 40 C.F.R. § 302.4, Table 302.4; Section 311(b)(2)(A) of the Clean Water Act, 33 U.S.C. § 1321(b)(2)(A); and 40 C.F.R. § 116.4, Table 116.4A.
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site. Specifically, Respondent is the current owner and operator of the Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- e. The conditions described in Section IV above constitute an actual or threatened "release" of a hazardous substance from the Facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The investigation and cleanup activities required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the National Contingency Plan ("NCP"), as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR AND EPA PROJECT MANAGER

20. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within ten (10) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five (5) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within ten (10) days of EPA's disapproval. The proposed contractor(s) must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The

QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

21. Within ten (10) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five (5) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.
22. EPA has designated Christopher Weden of the Region IX Emergency Response, Planning, and Assessment Branch as its Project Manager for the actions required by this Settlement Agreement. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to Mr. Weden via U.S. Mail at 75 Hawthorne Street, SFD-9-2, San Francisco, CA, 94105 and contemporaneously at Weden.Christopher@epa.gov.
23. EPA and Respondent shall have the right, subject to Paragraph 21, to change their respective designated Project Coordinators. Respondent shall notify EPA five (5) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

24. Respondent shall perform, at a minimum, all actions necessary to implement the Work Plan. The actions to be implemented generally include, but are not limited to, the following: (1) an investigation of the area in and around the Site to fully characterize the extent of PCB contamination in soils, sediments, and surface water; and (2) cleanup of areas contaminated as a result of the Release. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement.
25. Respondent shall secure and isolate the area impacted by the Release.
 - a. Respondent shall secure the area impacted by the Release and provide for Site control during and following the Work. Site control shall include, but not be limited to erecting and maintaining fences and signs to restrict access and prevent the spread of contamination.
 - b. Respondent shall provide secondary containment for the area at the Facility impacted by the Release. Containment shall be impervious so that it effectively contains oil and rainwater and prevents the off-Site spread of contamination.

- c. Respondent shall propose and implement measures to prevent the spread of contamination during storm events. Procedures should include both preventative and response measures in the event of a storm.
 - d. These measures are subject to the approval of EPA's Project Manager.
26. Respondent shall develop and submit a Sampling Plan.
- a. Respondent shall develop and submit to EPA a Sampling Plan within seven (7) days of the Effective Date of this Order. The purpose of the Sampling Plan is to determine the nature and extent of PCB contamination in all media at the Site. The Sampling Plan shall include sampling for characterization, sampling for confirmation/verification of cleanup, and sampling for waste disposal characterization. The sampling shall include various media potentially impacted by the Release. This may include, but is not limited to: surface soils down gradient of the location of the Release; oil and water in the Drainage Basin or any other containment structure downgradient of the Release; surfaces of Facility infrastructure and equipment potentially impacted by the Release; and surface water, sediments, soils, and debris potentially impacted by the Release that are located in the Creek, Creek bed, or any potential California Tiger Salamander Habitat, including the Lakes. The soil sampling plan shall be consistent with 40 C.F.R. § 279, and Respondent shall use the following PCB sampling guidance documents to assist in its development: Verification of PCB Spill Cleanup by Sampling and Analysis (PDF) (EPA-560/5-85-026, August, 1985) and Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup (PDF) (EPA-560/5-86-017, May 1986). Sampling of electrical equipment shall be consistent with Wipe Sampling and Double Wash/Rinse Cleanup as Recommended By the Environmental Protection Agency PCB Spill Cleanup Policy - April 1991 (PDF) (April 1991).
 - b. Following review and approval by EPA, which may include consultation with the Santa Barbara County Fire Department ("SBCFD"), Respondent shall immediately implement the Sampling Plan. Respondent shall conduct this sampling to identify the contaminants of concern at the Site, determine the lateral extent of contamination at the Site, and to verify cleanup and characterization of various media for waste disposal purposes.
 - c. Respondent shall provide EPA with split samples upon request.
 - d. Respondent shall submit to EPA a report of the validated concentrations of PCBs from the sampling and investigation within fifteen (15) days after completion of the laboratory analyses. Within fifteen (15) days after completion of the laboratory analyses, Respondent shall submit a final sampling report. The final sampling report shall propose appropriate removal, disposal and/or monitoring.
27. Respondent shall develop and submit a Work Plan.
- a. Within seven (7) days of the submission of the final sampling report Respondent shall submit to EPA, for its review and approval, a Work Plan detailing the actions to be implemented for the items identified in Paragraph 27(b), below. To the extent that information that is not currently available is necessary in order to fully define or develop a Work Plan requirement, the Work Plan shall set forth a schedule for

submittal of supplements to the Work Plan when that information becomes available. All references to and enforcement of the Work Plan shall also be applicable to any Work Plan supplement(s).

- b. The purpose of the Work Plan is to propose measures to address PCB-contaminated soils, equipment, and debris (which includes, but is not limited to, concrete, metal and wood) that are identified as having concentrations above 1 mg/kg on land; sediments which exceed 0.201 mg/kg in wash sediments; and surface water exceeding 0.001 mg/L ("action levels"). The Work Plan shall also address storage, transportation, and disposal of PCB-contaminated materials and include plans to address the following:
- i. Keeping PCB and oil-contaminated water separate from production water and disposing of each in accordance with approved plans.
 - ii. Conducting excavation of PCB-impacted soils and debris to concentrations which achieve action levels.
 - iii. Sampling and providing appropriate storage, packaging, and disposal of PCB oil and transformer carcasses.
 - iv. Testing all transformers at the Facility for PCBs.
 - v. Providing appropriate containers for the storage of all PCB-contaminated water, oil, soil, equipment, and debris. Unsecured wastepiles are not an acceptable method of storage for the Waste Material. Containers storing PCB-contaminated material shall be in good condition, safely hold the contaminated soil, water, debris, and equipment, and be able to withstand high winds and rain from severe storms. Containers storing PCB-contaminated soil, water, debris, and/or equipment shall also be located in secondary containment.
 - vi. Providing proper labeling for all containers including contents of container, date of accumulation, and results of sampling, if available.
 - vii. Properly disposing of any soil and other media with PCBs above the action level ("PCB contaminated materials"), including contaminated sampling and personal protective equipment. Proper disposal means disposal in accordance with RCRA and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq, and their implementing regulations.
 - viii. Shipment of PCB-contaminated material for final disposal within 90 days of excavation. In the Work Plan, Respondent shall identify the facilities where the PCB residuals/equipment will be disposed.
- c. As part of the Work Plan, Respondent shall submit a proposed schedule for the expeditious implementation of the actions required by the Work Plan.
- d. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan and/or the proposed schedule in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within ten (10) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

- e. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 27(d). Upon EPA approval, Respondent shall immediately implement the approved Work Plan and conduct sampling in accordance with approved Sampling Plan to verify that all media (soil, water, debris, equipment etc.) are below action levels. Respondent shall also conduct sampling for waste characterization purposes and provide for proper disposal of all PCB-contaminated materials.
28. Within seven (7) days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of the public health and safety during performance of on-Site Work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the Health and Safety Plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the implementation of the Work required by this Settlement Agreement.
29. Respondent shall follow EPA quality assurance/quality control standards ("QA/QC") and conduct sampling in accordance with the following:
- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain of custody procedures.
 - b. Respondent shall follow all relevant EPA guidance for sampling and analysis unless determined by EPA not to be applicable.
 - c. Respondent shall ensure that the state-approved laboratories used by Respondent for analyses perform such analyses according to EPA methods (SW-846, 3rd Edition, or as superseded) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval no later than seven (7) days prior to the commencement of analyses and shall not implement such protocols until receipt of EPA approval.
 - d. Respondent shall ensure that the state-approved laboratories used by Respondent for analyses participate in a QA/QC program equivalent to that which is followed by EPA and complies with the appropriate EPA guidance. As part the QA/QC program, and upon request by EPA, such laboratories shall perform analysis of a reasonable number of known samples provided by EPA to demonstrate the quality of the analytical data. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program as meeting the Quality System requirements.
 - e. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

- f. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.
30. Respondent shall submit the following reports to EPA:
- a. Respondent shall submit weekly written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by EPA's Project Manager. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
 - b. Respondent shall submit two (2) copies of all plans, reports or other submissions required by this Settlement Agreement, the Work Plan, or any approved work plan. Respondent shall also submit such documents in electronic form.
 - c. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property constituting the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA, SBCFD, and the RWQCB of the proposed conveyance, including the name and address of the transferee. Respondent shall require any such successors to comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).
31. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off Site or handled on Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the

report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Respondent shall comply with the following with respect to off-Site shipments:
- a. Respondent shall, prior to any off-Site shipment of Waste Material to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Project Manager.
 - b. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
 - c. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 32(a) and 32(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
 - d. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

33. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.
34. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date, or as otherwise specified in writing by EPA's Project Manager. Respondent shall immediately notify EPA if after using best efforts Respondent is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing all efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to

effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

35. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

36. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
37. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.
38. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.
39. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

40. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in Respondent's possession or control or which come into Respondent's possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate or individual retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct Respondent's contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
41. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.
42. Respondent hereby certifies that to the best of Respondent's knowledge and belief, after thorough inquiry, Respondent has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

43. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as

provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan or in an addendum to the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

44. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify EPA's Project Manager or, in the event of the EPA Project Manager's unavailability, the Regional Duty Officer for the Region IX Emergency Planning and Response Branch, at (800) 300-2193, and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).
45. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify EPA's Project Manager, or, in the event of the EPA Project Manager's unavailability, the Regional Duty Officer for the Region IX Emergency Planning and Response Branch, at (800) 300-2193 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF PROJECT MANAGER

46. EPA's Project Manager shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. EPA's Project Manager shall have the authority vested in an On Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action

undertaken at the Site. Absence of EPA's Project Manager from the Site shall not be cause for stoppage of work unless specifically directed by EPA's Project Manager.

XV. PAYMENT OF RESPONSE COSTS

47. Payments for Response Costs.

- a. Respondent shall pay EPA all Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORES Report or any succeeding report adopted by EPA, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 49 of this Settlement Agreement.
- b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill ID number 09RD. Respondent shall send the check(s) to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

At the time of payment, Respondent shall send notice that payment has been made to Christopher Weden, at the address provided in Paragraph 22.

- c. The total amount to be paid by Respondent pursuant to Paragraph 47(a) shall be deposited in the Greka, Bradley 3 Island Special Account, which is within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, at the discretion of EPA, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- 48.** In the event that the payments for Response Costs are not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.
- 49.** Respondent may dispute all or part of a bill for Response Costs submitted under this Settlement Agreement, if Respondent alleges that EPA has made an accounting error, or if

Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 47 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 47(b) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.
51. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, Respondent shall notify EPA in writing of Respondent's objection(s) within five (5) days of such action and state that it is invoking the dispute resolution process, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have twenty (20) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.
52. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

53. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to Respondent's contractors and

subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within twenty-four (24) hours of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if Respondent intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.
55. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

56. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 57 and 58 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

57. Stipulated Penalty Amounts - Work.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 57(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
1. \$1500	1st through 14th day
2. \$2500	15th through 30th day
3. \$7500	31st day and beyond

- b. Compliance Milestones

1. Completion of Site security measure identified in Paragraph 25
2. Submittal of Sampling Plan as required by Paragraph 26
3. Submittal of Work Plan as required by Paragraph 27
4. Submittal of Health and Safety Plan as required by Paragraph 28
5. Response Costs Payments as required by Section XV

58. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 30 and 31:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
a. \$1000	1st through 14th day
b. \$2500	5th through 30th day
c. \$5000	31st day and beyond

59. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 69 of Section XX, Respondent shall be liable for stipulated penalties in an amount at least equal to, and not more than three times, the amount of any costs of the Work performed by EPA.
60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the thirty first (31) day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official at the Division Director level, under Paragraph 52 of Section XVI (Dispute Resolution), during the period, if any, beginning on the twenty-first (21) day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing

herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

61. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.
62. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

The certified or cashier's check shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 09RD, the EPA Docket Number 9-2008-0015, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to Christopher Weden, USEPA, SFD-9-2, 75 Hawthorne Street, San Francisco, CA, 94105.

63. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.
64. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.
65. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 62. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA

shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 69. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

66. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

67. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.
68. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
 - b. liability for costs not included within the definition of Response Costs;
 - c. liability for performance of response action other than the Work;

- d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.
69. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in the performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

70. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
 - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

71. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 68 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.
72. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

73. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or Respondent's employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.
74. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.
75. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

76. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution or cost recovery against any persons not parties to this Settlement Agreement. The Parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of CERCLA Section 113(f)(3)(b), 42 U.S.C. § 113(f)(3)(b), pursuant to which Respondent has, as of the Effective Date,

resolved its liability to the United States for the Work and Response Costs. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements providing contribution protection pursuant to Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

77. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, or Respondent's employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorney's fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, or Respondent's employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.
78. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.
79. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

80. At least seven (7) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$1,000,000 (one million dollars) combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each

insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

81. Within fifteen (15) days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$390,000 (three hundred and ninety thousand dollars) in one or more of the following forms:
 - a. A surety bond guaranteeing performance of the Work;
 - b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
 - c. A trust fund;
 - d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
 - e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).
82. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 81(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate the ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 81(d) or (e) of this Section, Respondent shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 81 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

83. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 81 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.
84. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

85. EPA's Project Manager may make modifications to any plan or schedule or to the Work Plan in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Manager's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.
86. If Respondent seeks permission to deviate from any approved work plan or schedule or the Work Plan, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Manager pursuant to Paragraph 85 and 27(d).
87. No informal advice, guidance, suggestion, or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of the obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

88. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order

to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

89. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.
90. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices shall be attached to and incorporated into this Settlement Agreement: upon EPA approval, Appendix A (Work Plan) and Appendix B (Sampling Plan).

XXX. EFFECTIVE DATE

91. This Settlement Agreement shall be effective two (2) days after the Settlement Agreement is signed by the Superfund Branch Chief.
92. The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this 12th day of June, 2008.
For Respondent Greka Oil + Gas Inc.
By [Signature]
Title SVP + GC

It is so Ordered and Agreed this 13 day of June, 2008.

BY [Signature] DATE: 13 June 2008
Daniel A. Meer
Branch Chief, Planning, Response, and Assessment Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX

EFFECTIVE DATE: 6/16/08